



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Eastern Technologies, Ltd.

File: B-224006

Date: November 7, 1986

DIGEST

GAO will not consider objections regarding solicitation requirements which protester was obligated to meet by virtue of a prior contract for virtually identical products since protester is required to resolve all claims arising under that contract pursuant to the disputes clause of the contract. GAO consideration of objections would permit protester to circumvent claim resolving process of protester's prior contract since a favorable decision by GAO could be used as a basis to challenge the prior contract.

DECISION

Eastern Technologies, Ltd. (Eastern), protests as unduly restrictive the proposed delivery schedule in invitation for bids (IFB) No. DAAE07-86-B-J439 issued by the Department of the Army, Tank-Automotive Command, for 28, 5000 gallon air-transportable aircraft refueling trucks, with an option for 42 additional vehicles.

We dismiss the protest.

The solicitation provided for delivery of the first article test report 190 days from the date of contract award and 4 sequential delivery dates for the 28 vehicles after approval of the report. A prebid conference was held and all potential bidders, including Eastern, were invited. Eastern did not attend the conference. According to the Army, at the prebid conference, the terms of the IFB, including the delivery requirements, were discussed at length. The Army states that it was the consensus of the participants that a

037329

250-day schedule for delivery of the first article test report was considered reasonable. The Army issued amendment 3 to the IFB, extending the delivery schedule for the report from 190 days to 250 days.

Eastern filed its protest against the IFB's delivery schedule with our Office on August 19, 1986. At that time, Eastern was in the process of performing under another Army contract, No. DAAE07-86-C-J016, for 42 refueling trucks identical to those under the subject solicitation. However, Eastern was having difficulty in the timely performance of its contractual obligations under the prior contract and by letters (submitted for the protest record by Eastern) dated May 19, 1986, and June 24, 1986, Eastern requested a time extension for delivery of its first article test report at no change in contract price.

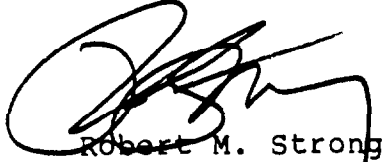
By letters dated May 29, 1986, and July 11, 1986 (submitted for the protest record by Eastern), the Army denied Eastern's request for a no-cost extension of the delivery date for the first article test reports because Eastern had "not documented any excusable delays" as defined by the Federal Acquisition Regulation (FAR). In addition, by letter dated August 15, 1986, the Army requested Eastern to "show cause" why Eastern should not be terminated for default, for among other reasons, Eastern's failure to deliver the two first article test reports, due August 13, 1986.

By letter of August 21, 1986 (also made part of the protest file by Eastern), Eastern contended that the Army acted improperly by requiring the delivery of the first article test report in the timeframe stated in its contract. Eastern states that it intended to meet the contractual delivery schedule of the vehicles themselves but would not agree to a reduction in contract value due to its late delivery of the two first article reports. Finally, in its comments on the agency report and the bid protest conference held on the matter, Eastern states that on October 6, 1986, Eastern received notice that its contract No. DAAE07-86-C-J016 had been terminated for default on October 1 on the ground that Eastern failed to deliver the two first article test reports within the contract specified 210-day timeframe.

So far as its performance under the defaulted contract is concerned, Eastern is free to challenge the delivery requirements (and the default) with the Army under the disputes and default clauses of its contract. However, although the Army

has provided our Office with a report rebutting Eastern's contentions concerning the reasonableness of the delivery schedule, we do not think we should provide Eastern with what is essentially another forum to decide issues related to potential claims under its now-defaulted contract with the Army. See 4 C.F.R. § 21.3(f)(1) (1986); Graham Associates, Inc., B-207495, Apr. 22, 1983, 83-1 C.P.D. ¶ 433.

Therefore, the protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel